COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MILLBROOK PROPERTIES MANAGEMENT, LLC	**v.**	**BOARD OF ASSESSORS OF THE CITY OF WORCESTER**

Docket Nos.: F318275 (2012)
F319043 (2013)
F322823 (2014)

Promulgated:
March 29, 2017

These are appeals filed under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Worcester ("appellee" or "assessors") to abate taxes on certain real estate in Worcester, owned by and assessed to Millbrook Properties Management, LLC ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal years 2012, 2013, and 2014 ("fiscal years at issue").

Commissioner Chmielinski heard theses appeals. Chairman Hammond and Commissioners Scharaffa, Rose, and Good joined him in the revised decision for the appellant in Docket No. F318275 (FY 2012), which is promulgated herewith, and for the appellee in Docket Nos. F319043 (FY 2013) and F322823 (FY 2014).

These findings of fact and report are made pursuant requests by both parties under G.L. c. 58A, § 13 and 831 CMR 1.32.

Matthew A. Luz, Esq. for the appellant.

John F. O'Day, Jr., Assistant City Solicitor, for the appellee.

FINDINGS OF FACT AND REPORT

I. Jurisdiction and Description

On the basis of all the evidence, including the testimony and documentary exhibits entered into the record, the Appellate Tax Board ("Board") found the following.

On January 1, 2011, January 1, 2012, and January 1, 2013, the relevant valuation and assessments dates for the fiscal years at issue, the appellant was the assessed owner of an irregularly-shaped 2.78-acre parcel of land improved with an industrial-use building located at 57 Millbrook Street in Worcester ("subject property"). The subject property is identified on the assessors Map 13 as Block 25A, Parcel 11.

The assessors valued the subject property and assessed property taxes for the fiscal years at issue as follows:

Fiscal Year	Assessed Value	Tax Rate Per $1,000	Tax Assessed
2012	$2,918,700	$29.07	$84,846.61
2013	$2,918,700	$30.85	$90,041.90
2014	$2,710,300	$30.83	$83,558.55

In accordance with G. L. c. 59, § 57C, the appellant timely paid the taxes due without incurring interest and, in accordance with G. L. c. 59, § 59, timely filed Applications for Abatement for the fiscal years at issue. The appellee denied the applications, and, in accordance with G. L. c. 59, §§ 64 and 65, the appellant seasonably appealed the denials to the Board. The relevant dates relating to the Board's jurisdiction are set forth in the following table.

Fiscal Year	Tax Bills Mailed	Abatement Application Filed	Abatement Denied	Appeal Filed
2012	5/22/2012	6/22/2012	9/20/2012	10/15/2012
2013	12/31/2012	1/07/2013	4/01/2013	4/25/2013
2014	12/31/2013	1/28/2014	4/28/2014	5/12/2014

On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

The subject property is improved with an 86,886-square-foot industrial building ("subject building"). The subject property is situated in the northeastern section of Worcester within a mixed-use area that is bordered by Interstate 190 to the northeast, Interstate 290 to the east, and Route 12 to the west. The subject property is situated along Millbrook Street, a moderately traveled roadway.

The subject building, constructed in 1910, has a steel-frame structure with a concrete foundation and a flat roof with a partial rubber and a partial tar and gravel covering. The exterior is a mix of brick, wood, and concrete block. The subject building is designed for industrial use, with ancillary office space, by multiple tenants. Interior finishes include: walls - painted plaster in the office areas and a mix of concrete block, particle board, and plywood in the industrial space; ceilings - suspended acoustic tiles in the office space and concrete, exposed brick, or exposed wood in the industrial areas; and flooring - carpet, marble tile, or laminate in the office areas, and concrete, plywood, quarry tile, or vinyl tile in the industrial areas. Access to the second floor is provided by two interior staircases; in addition, there are two freight elevators. The building has 19 overhead doors with tailboard access. There is paved on-site parking for approximately 50 vehicles. According to the subject property's property record cards, the subject building is in overall average condition.

II. Appellant's Evidence

The appellant presented its case-in-chief through the testimony and appraisal report of Eric Wolff, whom the Board qualified as an expert in the area of real estate valuation. To develop a value for the subject property for the fiscal years at issue, Mr. Wolff first examined the subject property's highest-and-best use and concluded that it was its current use as an industrial-use building with related or ancillary office space. Mr. Wolff then considered the three usual methods for estimating the value of the subject property for the fiscal years at issue. He rejected both the cost and sales-comparison approaches and instead relied on the income-capitalization approach to estimate the fair cash value of the subject property for the fiscal years at issue because it was an income-producing property.[1]

To determine what he considered to be the most appropriate rent to use in his income-capitalization methodology for the fiscal years at issue, Mr. Wolff analyzed the subject property's relevant rent rolls and also investigated market rental rates by surveying what he regarded as similar properties. According to the subject property's lease data provided by the owner, the subject property's average rents for the fiscal years at issue, excluding the space occupied by an affiliate of the owner, was $3.02 per square foot for fiscal year 2012, $2.62 per square foot for fiscal year 2013,[2] and $3.23 per square foot for fiscal year 2014. Mr. Wolff also conducted a survey of 10 purportedly comparable industrial-use spaces located in Worcester. These properties ranged in size from 8,437 square feet to 60,037 square feet with rental rates that ranged from $2.71 to $4.50 per square foot.

Based on this information, together with the subject property's location, size and overall condition, Mr. Wolff estimated an economic rent of $3.00 per square foot on a triple-

[1] While Mr. Wolff included in his appraisal report a sales-comparison analysis for each of the fiscal years at issue, he did not testify about this method, except to say that he did not rely on the sales-comparison approach or the values derived from it. The Board, therefore, gave no weight to Mr. Wolff's sales-comparison approach or to the estimates of value obtained from it.

[2] Presumably, the average rent decrease from fiscal year 2012 to fiscal year 2013, and the corresponding increase from fiscal year 2013 to fiscal year 2014, was attributable to a 3,653-square-foot space that was vacant during calendar year 2012.

net basis. Applying this rate to the subject property's net rentable area of 90,879 square feet, which included basement space of 3,993 square feet, Mr. Wolff obtained a potential gross income of $272,637, which he considered to be a stabilized rent for the fiscal years at issue.

For vacancy and collection loss, Mr. Wolff testified that he consulted with local brokers who reported that vacancy rates for industrial space in Worcester during the relevant time period ranged between 10% and 15%. He further testified that market surveys conducted by CoStar during the relevant time period indicated that the vacancy rate for industrial space in the Worcester area was between 12.3% and 13%. For purposes of the subject property, Mr. Wolff selected a vacancy rate of 10% for the fiscal years at issue. This allowance resulted in an effective gross income of $245,373 for the fiscal years at issue.

Next, Mr. Wolff determined the subject property's net-operating income by deducting from the effective gross income the subject property's estimated operating expenses. Mr. Wolff noted that within the subject property's competitive market area, the tenants were responsible for all operating expenses, excluding those associated with the management and structural maintenance of the building. Consequently, Mr. Wolff adopted a management fee equal to 5% of the effective gross income, a replacement reserve allowance equal to $0.15 per square foot, and also a leasing commission expense equal to 1% of the potential gross income, which he testified were typical in the market. Mr. Wolff deducted these expenses from his effective gross income to derive a stabilized net-operating income of $216,746 for the fiscal years at issue.

Finally, Mr. Wolff determined a capitalization rate for each of the fiscal years at issue. Mr. Wolff developed his capitalization rates using a band-of-investment technique. For fiscal year 2012, Mr. Wolff assumed a mortgage-to-equity ratio of 75% to 25%, with a 7.55% interest rate and a 12.5% equity capitalization rate, resulting in a capitalization rate of 9%. Applying the 9% capitalization rate to the $216,746 net operating income resulted in an estimated rounded value for the subject property of $2,410,000 for fiscal year 2012.

For fiscal year 2013, Mr. Wolff assumed a mortgage-to-equity ratio of 75% to 25%, with a 6.67% interest rate and a 12% equity capitalization rate, resulting in a capitalization rate of 8%. Applying the 8.00% capitalization rate to the $216,746 net operating income resulted in an estimated rounded value for the subject property of $2,710,000 for fiscal year 2013.

For fiscal year 2014, Mr. Wolff once again assumed a mortgage-to-equity ratio of 75% to 25%, with a 6.67% interest rate and a 14.00% equity capitalization rate, resulting in a capitalization rate of 8.50%. Applying the 8.50% capitalization rate to the $216,746 net operating income resulted in an estimated rounded value for the subject property of $2,550,000 for fiscal year 2014. For all of the fiscal years at issue, Mr. Wolff reported that he also consulted the relevant rates published by national surveys, such as *RealtyRates.com Investor Surveys, Korpacz Reports, CB Richard Ellis Cap Rate Surveys,* and *Real Estate Research Corporation.*

Mr. Wolff's income-capitalization analyses are reproduced in the following table.

Mr. Wolff's Income-Capitalization Analyses

INCOME			
Office Space 90,879 square feet @ $3.00 psf			
Potential Gross Income ("PGI"):			**$ 272,637**
Vacancy & Collection Allowance (10%):			($ 27,264)
Effective Gross Income ("EGI"):			**$ 245,373**
EXPENSES			
Management Fee	$ 12,269	@ 5% of EGI	
Replacement Reserves	$ 13,632	@ $0.15 psf	
Commissions	$ 2,726	@ 1% of PGI	
Total Expenses:			($ 28,627)
Net Operating Income ("NOI"):			**$ 216,746**
Divide by: Capitalization Rate for Fiscal Year 2012 - 9.00%			
Indicated Value for Fiscal Year 2012			$2,408,289
Rounded Value for Fiscal Year 2012			**$2,410,000**
Divide by: Capitalization Rate for Fiscal Year 2013 - 8.00%			
Indicated Value for Fiscal Year 2013			$2,709,325
Rounded Value for Fiscal Year 2013			**$2,710,000**
Divide by: Capitalization Rate for Fiscal Year 2014 - 8.50%			
Indicated Value for Fiscal Year 2014			$2,549,953
Rounded Value for Fiscal Year 2014			**$2,550,000**

III. Appellee's Evidence

In defense of their assessments, the assessors relied primarily on their cross-examination of Mr. Wolff, but they also offered the testimony of William Ford, City Assessor, and introduced several exhibits, including: the requisite jurisdictional documentation, the subject property's property record cards and income valuation cards for the fiscal years at issue, and the appellant's responses to the assessors' G.L. c. 59, § 38D requests ("§ 38D requests") for fiscal years 2013 and 2014. Mr. Ford testified that the data included in the assessors' income-capitalization methodology was based on information collected by the assessors pursuant to their § 38D requests and also consideration of the subject property's actual use, size, and location. A summary of the assessors' income-capitalization methodology for the fiscal years at issue is shown in the following tables.[3]

[3] The Board noted some small mathematical errors in the assessors' income-capitalization analyses, which had minimal effect on the values derived.

Assessors' Income-Capitalization Methodology – FY 2012 & FY 2013

INCOME			
Distrib Wrhs	33,473 square feet @ $7.00	$234,311	
Loft Light[4]	53,413 square feet @ $4.25	$227,005	
PGI:			$461,316
Vacancy	(25.2%)		($116,251)
EGI:			**$345,065**
Expenses			
Distrib Wrhs	(13% of Whrs EGI)	$ 23,135	
Loft Light	(17% of Loft EGI)	$ 28,017	
Total Expenses:			**($51,152)**
NOI:			**$293,913**
Capitalization Rate		**10.07%**	
Value Estimate			$2,918,699
Rounded			**$2,918,700**

Assessors' Income-Capitalization Methodolgy – FY 2014

INCOME			
Distrib Wrhs	33,473 square feet @ $6.75	$225,943	
Loft Light	53,413 square feet @ $3.75	$200,299	
PGI:			$426,242
Vacancy			
Distrib Wrhs	(29.4%)	$66,427	
Loft Light	(19.6%)	$39,259	($105,686)
EGI:			**$320,556**
Expenses			
Distrib Wrhs	(13% of Whrs EGI)	$ 21,056	
Loft Light	(17% of Loft EGI)	$ 26,572	
Total Expenses:			**($47,628)**
NOI:			$272,928
Capitalization Rate		**10.07%**	
Value Estimate			$2,710,308
Rounded			**$2,710,300**

IV. Board's Ultimate Findings

Based on all of the evidence, the Board found that the appellant met its burden of proving that the subject property

[4] The assessors designated a portion of the building as "loft light" but did not define this term.

was overvalued for fiscal year 2012, but not for fiscal years 2013 and 2014. The Board determined that the highest-and-best use of the subject property was, as Mr. Wolff proposed, its continued use as an industrial property with some related or ancillary office space and also agreed with the parties that the income-capitalization methodology was the best approach to use to value the income-producing subject property for the fiscal years at issue.

To determine the subject property's income, the Board agreed with both the assessors and Mr. Wolff that the subject property's rentable area was 86,886 square feet.[5] The Board agreed with Mr. Wolff that the subject property's market rent should be one consolidated rate, as opposed to a bifurcated – industrial and office – rate, as suggested by the assessors. The Board found, however, that Mr. Wolff's suggested rental rate of $3.00 per square foot was at the lower end of the range of his purportedly comparable properties and instead, given the undisputed favorable location and average condition of the subject property, selected an average market rent of $3.75 per square foot for fiscal years 2012 and 2013, and an average market rent of $3.50 per square foot for fiscal year 2014. The Board also adopted Mr. Wolff's vacancy rate of 10%, which in the Board's view best reflected the subject property's market.

[5] Mr. Wolff also included 3,993 square feet of basement space in his analysis.

For expenses, the Board recognized that under the triple-net leasing scenario that it adopted, the tenant pays, or reimburses the landlord, for most operating expenses associated with the building. Accordingly, the Board agreed with Mr. Wolff's approach regarding expenses and adopted his recommendations for a management fee equivalent to 5% of effective gross income and a leasing commission expense calculated at 1% of effective gross income.[6] The Board further found that Mr. Wolff's replacement for reserves, which he calculated on a per-square-foot basis and was equivalent to 5% of the subject property's potential gross income, was more properly calculated at 3% of the subject property's potential gross income.[7]

As for the capitalization rates, the Board found that Mr. Wolff's pre-tax factor capitalization rates of 9% and 8.5% for fiscal years 2012 and 2014, respectively, were appropriate. The Board further found, however, that Mr. Wolff's pre-tax factor capitalization rate of 8% for fiscal year 2013 was too

[6] Although Mr. Wolff recommended a leasing commission expense of 1% of potential gross income, the Board found that this cost should more properly be calculated at 1% of effective gross income, which is the Board's preferred methodology when not calculating this expense on a per-square-foot basis. *See, e.g.,* ***Star Margit ETR v. Assessors of Woburn***, Mass. ATB Findings of Fact and Reports 2016-461, 473; ***Benjamin Electric Supply Co., Inc. v. Assessors of Worcester***, Mass. ATB Findings of Fact and Reports 2001-788, 794-98 (adopting the assessors income-capitalization methodology that includes a leasing commission expense of 5% of EGI). The Board noted that leasing commissions are dependent on occupancy and are therefore variable as opposed to fixed expenses.

[7] *See.* ***Star Margit ETR,*** Mass. ATB Findings of Fact and Reports at 2016-474.

low and, instead, chose a rate of 8.5% based on the evidence of record. As a final step in the Board's determination of capitalization rates, the applicable pro-rated tax factor to account for vacancy for each of the fiscal years at issue was added to the base capitalization rates resulting in overall capitalization rates of 9.2907%, 8.8085%, and 8.8083% for fiscal years 2012, 2013, and 2014, respectively.

The Board's income-capitalization analyses are contained in the following tables.

Board's Income-Capitalization Analysis – FY 2012 & FY 2013

Income			
Building Square Footage		86,886	
Market Rent		$3.75 psf	
PGI:			**$ 325,823**
Less: Vacancy & Collection Allowance – 10%			($ 32,582)
EGI:			**$ 293,241**
EXPENSES			
Management Fee	5% of EGI	$14,662	
Replacement Reserves	3% of PGI	$ 9,775	
Commissions	1% of EGI	$ 2,932	
Total Expenses:			($ 27,369)
NOI:			**$ 265,872**
Divide by Total Capitalization Rate for Fiscal Year 2012:			
Capitalization Rate			9.0000%
Tax Factor			0.2907%
Total Capitalization Rate			9.2907%
Indicated Value for Fiscal Year 2012			$2,861,700
Rounded Value for Fiscal Year 2012			**$2,862,000**
Divide by Total Capitalization Rate for Fiscal Year 2013:			
Capitalization Rate			8.5000%
Tax Factor			0.3083%
Total Capitalization Rate			8.8083%
Indicated Value for Fiscal Year 2013			$3,018,426
Rounded Value for Fiscal Year 2013			**$3,018,400**

Board's Income-Capitalization Analysis – FY 2014

Income			
Building Square Footage		86,886	
Market Rent		$3.50 psf	
PGI :			**$ 304,101**
Less: Vacancy & Collection Allowance – 10%			($ 30,410)
EGI:			**$ 273,691**
EXPENSES			
Management Fee	5% of EGI	$13,685	
Replacement Reserves	3% of PGI	$ 9,123	
Commissions	1% of EGI	$ 2,737	
Total Expenses:			($ 25,545)
Net-Operating Income:			**$ 248,146**
Divide by Total Capitalization Rate for Fiscal Year 2014:			
Capitalization Rate			8.5000%
Tax Factor			0.3083%
Total Capitalization Rate			8.8083%
Indicated Value for Fiscal Year 2014			$2,817,184
Rounded Value for Fiscal Year 2014			**$2,817,200**

On this basis, the Board found that the subject property was overvalued by $56,700 for fiscal year 2012 and therefore issued a revised decision for the appellant, which is promulgated herewith, and ordered abatement in the amount of $1,648.27 in Docket No. F318275. The Board further found that the subject property was not overvalued for fiscal years 2013 and 2014 and therefore issued a decision for the appellee in Docket No. F319043 and Docket No. F322823.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the property has a lower value than that assessed. "'The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax.'" ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In determining fair cash value, all uses to which the property was or could reasonably be adapted on the relevant assessment dates should be considered. ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989). The goal is to ascertain the maximum value of the property for any legitimate and reasonable use. ***Id.*** If the property is particularly well-suited for a certain use that is not prohibited, then that use may be reflected in an estimate of its fair market value. ***Colonial Acres, Inc. v. Assessors of North Reading***, 3 Mass. App. Ct. 384, 386 (1975). "In determining the property's highest and best use, consideration should be given to the purpose for which the property is adapted." ***Peterson v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2002-573, 617 (citing APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 315-316 (12th ed., 2001)), *aff'd*, 62 Mass. App. Ct. 428 (2004). In the present appeals, the Board found that the highest-and-best use of the subject property during the fiscal years at issue was its existing use as an industrial warehouse property containing some related or ancillary office space.

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. ***Correia v. New Bedford Redevelopment Authority***, 375 Mass. 360, 362 (1978). The use of the income-capitalization approach is appropriate when reliable market-sales data are not available. ***Assessors of Weymouth v. Tammy Brook Co.***, 368 Mass. 810, 811 (1975); ***Assessors of Lynnfield v. New England Oyster House***, 362 Mass. 696, 701-02 (1972); ***Assessors of Quincy v. Boston Consolidated Gas Co.***, 309 Mass. 60, 67 (1941). It is also recognized as an appropriate technique to use for valuing income-producing property. ***Taunton Redevelopment Associates v. Assessors of Taunton,*** 393 Mass. 293, 295 (1984). In the present appeals, the Board agreed with both parties that the income-capitalization approach was the most appropriate method to value the subject property for the fiscal years at issue.

"The direct capitalization of income method analyzes the property's capacity to generate income over a one-year period and converts the capacity into an indication of fair cash value by capitalizing the income at a rate determined to be appropriate for the investment risk involved." ***Olympia & York State Street Co. v. Assessors of Boston,*** 428 Mass. 236, 239 (1998). "It is the net income that a property *should* be earning, not necessarily what it actually earns, that is the figure that should be capitalized." ***Peterson v. Assessors of Boston,*** 62 Mass. App. Ct. 428, 436 (2004) (emphasis in original). Accordingly, the income stream used in the income-capitalization method must reflect the property's earning capacity or economic rental value. ***Pepsi-Cola Bottling Co. v. Assessors of Boston,*** 397 Mass. 447, 451 (1986). Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted, they are indicative of the subject property's earning capacity. *See* ***Correia v. New Bedford Redevelopment Auth.,*** 5 Mass. App. Ct. 289, 293-94 (1977), *rev'd on other grounds,* 375 Mass. 360

(1978); ***Library Services, Inc. v. Malden Redevelopment Auth.***, 9 Mass. App. Ct. 877, 878 (1980)(rescript).

In these appeals, the parties differed in their determination of the rental rate, with Mr. Wolff using one rate for the entire subject property's rentable area and the appellee employing two separate rates for office space and industrial space. The Board found that Mr. Wolff presented the more convincing evidence with regards to the treatment of the entire subject property's rental space as industrial with a limited amount of related or ancillary office space. With respect to determining the rental amount per square foot, the Board weighed the evidence presented by the parties and made its own independent determination that a rate of $3.75 per square foot for fiscal years 2012 and 2013 and $3.50 for fiscal year 2014 was, under the circumstances, the appropriate rental rate for the subject property for the fiscal years at issue. Next, the Board agreed with Mr. Wolff that the vacancy allowance should be 10% for the fiscal years at issue, finding this rate to be reasonable and well supported.

After accounting for vacancy and rent losses, the net-operating income is obtained by deducting the landlord's appropriate expenses. ***General Electric Co.***, 393 Mass. at 610. The expenses should also reflect the market. ***Id.***; *see* ***Olympia & York State Street Co.***, 428 Mass. at 239, 245. In the present appeals, the Board found that Mr. Wolff's management fee and commissions expenses, calculated at 5% and 1% of effective gross income, respectively, were reasonable.[8] The Board further found, however, that Mr. Wolff's replacement for reserves calculated on a per-square-foot basis was excessive and more properly calculated at 3% of the subject property's potential gross income. *See* ***Star Margit ETR,*** Mass. ATB Findings of Fact and Reports at 2016-473-74.

The capitalization rate should reflect the return on investment necessary to attract investment capital. ***Taunton Redevelopment Associates,*** 393 Mass. at 295. Based on the evidence presented, the Board found that Mr. Wolff's pre-tax factor capitalization rates of 9% and 8.5% for fiscal years 2012 and 2014, respectively, were appropriate. However, for fiscal year 2013, the Board determined that Mr. Wolff's pre-tax factor capitalization rate of 8% for fiscal year 2013 was too low under the circumstances and exercised its own independent judgment in selecting from the evidence a rate of 8.5%. To these base capitalization rates, the Board then added the applicable pro-rated tax factor to account for vacancy for each of the fiscal years at issue, resulting in overall capitalization rates of 9.2907%, 8.8085% and 8.8083% for fiscal years 2012, 2013, and 2014, respectively.

[8] *See* footnote 6, *supra*.

The Board is not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert witness suggests. Rather, the Board can accept those portions of the evidence that the Board determines have more convincing weight, and form its own independent judgment of fair market value. ***Foxboro Associates v. Board of Assessors of Foxborough***, 385 Mass. 679, 683 (1982); ***New Boston Garden Corp. v. Board of Assessors of Boston***, 383 Mass. 456, 473 (1981); ***New England Oyster House, Inc.*** at 701-702; ***General Electric Co.***, 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984). In evaluating the evidence before it in the instant appeals, the Board selected among the various elements of value and appropriately formed its own independent judgment of fair cash value. ***General Electric Co.***, 393 Mass. at 605; ***North American Philips Lighting Corp.***, 392 Mass. at 300. "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the Board. ***Cummington School of the Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977).

On the basis of the Board's analyses, the Board found and ruled that the subject property was overvalued by $56,700 for fiscal year 2012 and therefore issued a revised decision for the appellant and ordered abatement in the amount of $1,648.27 in

Docket No. F318275. The Board further found and ruled that the subject property was not overvalued for fiscal years 2013 and 2014 and therefore issued a decision for the appellee in Docket No. F319043 and Docket No. F322823.

THE APPELLATE TAX BOARD

By: ______________________________
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: ______________________________
Asst. **Clerk of the Board**